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OOI KIM THOR

v.

THE STRAITS ECHO PRESS [1951] SDN. BHD.

HIGH COURT MALAYA, PENANG

EDGAR JOSEPH JR J

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[ORIGINATING SUMMONS NO. 229 OF 1981]

18 MAY 1984

CIVIL PROCEDURE: *Procedure by originating summons - Whether appropriate - Serious dispute as to fact and law - Existence of oral agreement - Allegations of fraud - Prayer for reliefs of declaration and injunction.*

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AGENCY: *Termination - Whether valid - Oral agreement - Whether binding - Whether injunction and reliefs sought and/or declaration could be granted.*

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The plaintiff, trading as Universal Agency Company, by an originating summons sought a declaration as to whether the defendants were entitled to terminate and had in fact terminated by notice dated 31 March 1981 the agency agreement dated 15 July 1977, and an injunction against the defendants to restrain them from appointing anyone else as an agent or a distributor. The plaintiff claimed that by the agreement dated 15 July 1977 the defendants appointed Universal Agency, of which the plaintiff was the sole proprietor, sole agent for various states for the purpose of effecting sales of the defendants' newspapers for a term of years from 15 July 1977, thereafter from year to year until determined at the end of any subsequent year by three months' written notice given by either party. The Universal Agency was also appointed sole agent for effecting sales of the defendants' periodical known as "Saturday Weekly".

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The plaintiff claimed further that in 1978 an oral agreement was entered into between the managing director of the defendants and Central Agencies, of which the plaintiff was the sole proprietor. The defendants were in financial difficulties and the plaintiff as Central Agencies agreed to advance money to them and to pay some of their creditors, these payments to be adjusted against the proceeds of the sale of the defendants' newspapers and periodical, and in consideration, the Universal Agency was to remain the sole agent for so long as the defendants remained indebted to Central Agencies. The defendants, however, had purported to terminate the agency agreement by a letter dated 31 March 1981. At 30 April 1981 a sum of RM1,077,690.12 was due and owing by the defendants to Central Agencies. The plaintiff claimed that the letter of 31 March 1981 was therefore unlawful and of no effect.

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Held:

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[1] Procedure by way of originating summons was inappropriate. The proper procedure for the plaintiff to adopt was to issue a writ. There was a serious dispute as to fact and law regarding the authority of the defendants' managing director as to whether or not the alleged oral agreement was binding on the defendants. Further, as there were allegations of fraud and since the reliefs prayed for were declaration and injunction, which spring from the equitable jurisdiction of the Court, the conduct of the parties became material. (*Foon Seong v. Chan San Choon* [1947] MLJ 85; *In re Powers* [1885] 30 Ch D 291, 296; *E'Singam v. Dr. Sundram & Ors.* [1960] MLJ 91; *Ong Yok Chu & Anor. v. Yong Teck Fong & Anor.* [1960] MLJ 292).

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[2] But even assuming procedure by way of originating summons was appropriate and the merits of the case had to be considered, the Court would not be disposed to grant the reliefs sought by the plaintiff.

(a) The agency agreement was not irrevocable. Even if the oral agreement was assumed to be binding on the defendants, the agency became coupled with an interest which arose only collaterally to the authority of agency. A distinction must be drawn between a case in which the power is coupled with an interest and a case in which the interest is only collateral to the power. (*Walsh v. Whitcomb* [1797] 2 Esp 565; *Gaussen v. Morton* [1830] 10 B & C 731; *Barclays Bank Ltd. v. Bird* [1954] Ch 274; *Abbott v. Scrutton* [1846] 9 I Eq R 233; *Chinnock v. Sainsbury* [1860] 30 LJ Ch 409).

(b) Even assuming the agency agreement was irrevocable, the Court would not have been prepared to exercise its discretion in favour of the plaintiff by granting the injunction or declaration sought. What the plaintiff was in effect seeking was specific performance of the agency agreement, which by its inherent nature was a personal contract depending on mutual confidence. Further, there were no exceptional circumstances justifying the grant of the declaration and the injunction sought. In any event, a declaration not accompanied by an injunction would be of no practical value to the plaintiff in the circumstances of the case, as negotiations for the sale of the defendants' business were in progress, and therefore outside the province of the Court to grant. (*Decro-Wall International* [1971] 2 All ER 216 distinguished; *Page One Records Ltd. v. Britton* [1968] 1 WLR 157; *Denmark Productions Ltd. v. Boscobel Productions Ltd.* [1969] 1 QB 699; *Chinnock v. Sainsbury* (*supra*); *Frith v. Frith* [1906] AC 254, 261, 262; *Francis v. K.L. Municipal Councillors* [1962] 1 WLR 1411, 1417-1418; *L. French & Company Ltd. v. Leeston Shipping Company Ltd.* [1922] 1 AC 451 at 454/55; *Rhodes v. Forwood* [1876] 1 LR 256 at 267; *Earl of Dysart v. Hammerton* [1914] 1 Ch 822).

[*Originating summons dismissed with costs. Plaintiff at liberty to institute proceedings by way of writ.*]

Cases referred to:

Foon seong v. Chan San choon [1947] MLJ 85
In re Powers [1885] 30 Ch D 291
E'Singam v. Dr. Sundram & Ors. [1960] MLJ 91
Ong Yok Chu & Anor. v. Yong Teck Fong & Anor. [1960] MLJ 292
Walsh v. Whitcomb [1797] 2 Esp 565
Gaussen v. Morton [1830] 10 B & C 731
Barclays Bank Ltd. v. Bird [1954] Ch 274
Abbott v. Scrutton [1846] 9 I Eq R 233
Chinnock v. Sainsbury [1860] 30 LJ Ch 409
Decro-Wall International [1971] 2 All ER 216
Page One Records Ltd. v. Britton [1968] 1 WLR 157
Denmark Productions Ltd. v. Boscobel Productions Ltd. [1969] 1 QB 699
Frith v. Frith [1906] AC 254
Francis v. K.L. Municipal Councillors [1962] 1 WLR 1411
L. French & Company Ltd. v. Leeston Shipping Company Ltd. [1922] 1 AC 451
Rhodes v. Forwood [1876] 1 LR 256
Earl of Dysart v. Hammerton [1914] 1 Ch 822
Clay-Hill Brick & Tile Co. Ltd. v. Rawlings [1938] 4 All ER 100
British (Thomson-Houston) Co. Ltd. v. Federated European Bank [1932] 2 KB 176
Freeman & Lockyer v. Buckhurst Park Propertier (Margal) Ltd. [1964] 1 All ER 630

a For the plaintiff - S. Thillaimuthu; M/s.Thillaimuthu & Phock Kin
 For the defendants - Dennis Xavier; M/s. Sethu, Ghazali & Gomez

JUDGMENT

Edgar Joseph Jr J:

b By this originating summons the plaintiff who trades as Universal Agency Company seeks the determination by the Court of the following questions:

- (1) whether the defendants have not terminated an Agency Agreement dated 15 July 1977, and were not entitled to terminate the same and that the notice of 31 March 1981, given by them purporting to terminate the same was of no effect?
- c* (2) whether an injunction restraining the defendants from appointing anyone else as agent or distributor for or themselves selling the "National Echo", the "Sunday Echo" and the "Saturday Weekly" in the States of Penang (inclusive of Province Wellesley), Perak, Kedah and Perlis for so long as the defendants shall be indebted to Ooi Kim Thor trading as Central Agencies ought to be granted?

d According to the plaintiff's affidavit affirmed to on 9 June 1981 (Encl. 3) and filed in support of the originating summons, he is the sole proprietor of the firm known as Universal Agency Company and also of the firm known as Central Agencies both of which have their place of business at No. 484 Beach Street, Penang, and carry on business as importers, exporters and commission agents.

e He adds that by an agreement dated 15 July 1977 and made between the defendants as principals and Universal Agency Company (Universal Agency) as agent, the defendants appointed Universal Agency sole agent for the States of Penang (inclusive of Province Wellesley), Kedah, Perlis, Perak, Selangor, Negeri Sembilan Malacca, Johore, Kelantan, Trengganu and Pahang (the agency area) for the purpose of effecting sales of the defendants' newspapers known as "National Echo" and "Sunday Echo", for a term of years, commencing 15 July 1977, thereafter from year to year until determined at the end of any subsequent year by three months' written notice given by either party subject to the terms and conditions therein contained. It was further provided that Universal Agency shall remit to the defendants on or before the 15th day of each month, the proceeds of sale of the newspapers sold by Universal Agency in the preceding month less the sales commission.

He adds that at the material time Central Agencies also sold and delivered newsprint to the defendants on credit.

g The agreement was duly implemented and, in May 1978, the defendants also appointed Universal Agency the sole agent for effecting sales of their periodical known as "Saturday Weekly" in the agency area.

h He further alleged that also in May 1978, the defendants through their managing director one Mr. K.K. Liew told him that the defendants were in financial straits and requested him as Central Agencies to advance money to them on current bank interest rates and also to pay some of their creditors on their behalf and adjust the proceeds of sale of the defendants' newspapers and periodicals against the money advances and interest thereon and payment to their creditors to be made on their behalf and the sales of newsprint made to them by Central Agencies by payment of the proceeds of sale of the newspapers and the periodical collected by Universal Agency less commission on the sales direct to Central Agencies towards the defendants' aforesaid liabilities to Central Agencies. In consideration of this,

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the defendants agreed that Universal Agency shall remain their sole agent for the sales of the said newspapers and the periodical under the said agreement “for so long as the defendants shall be indebted to Central Agencies so as to enable Central Agencies to recover back all monies due from the defendants to Central Agencies.” The plaintiff claimed that he agreed to this proposal by Mr. K.K. Liew.

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He further alleged that the above oral agreement was confirmed by a letter dated 25 May 1978, by the defendants addressed to him as sole proprietor of Central Agencies and by another letter also bearing the same date addressed to him as sole proprietor of Universal Agency (“the alleged oral agreement”). Both these letters were on the defendants’ printed note paper bearing their address and telephone numbers.

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He further alleged that in reliance upon the alleged oral agreement, Central Agencies continued to supply newsprint to the defendants on credit from time to time and also made to them money advances and paid their creditors and Universal Agency duly credited the proceeds of sale of the newspapers less commission to the Central Agencies to account of the defendants’ said liabilities to the Central Agencies.

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He further states that on 1 February 1980, the defendants moved their newspapers and periodical production line with printing machinery to Kuala Lumpur and it was then agreed between him and Mr. K.K. Liew that the area for sale by Universal Agency Company of the said National Echo, Sunday Echo and Saturday Weekly would be confined only to the States of Penang (inclusive of Province Wellesley), Perak Kedah and Perlis and that the proceeds of the sale of the said newspapers and the periodical made in these States by Universal Agency, less commission would be paid to Central Agencies to account of the defendants’ liabilities to Central Agencies.

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He further states that as at 30 April 1981, a sum of RM1,077,690.12 was due and owing by the defendants to Central Agencies for newsprint sold and delivered to the defendants, money advances with interest accrued made to the defendants and payments made to the defendants’ creditors on behalf of the defendants.

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He then complains that notwithstanding the alleged oral agreement granting Universal Agency sole agency for the sale of the defendants’ newspapers and periodical for as long as defendants shall remain indebted to Central Agencies so as to enable them to recover back all monies due from the defendants to Central Agencies, the defendants, by letter dated 31 March 1981, addressed to Universal Agency had purported to terminate the said agency agreement on 15 July 1981. The purported termination, according to him, is unlawful and of no effect.

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He accordingly consulted his solicitors, Messrs: Thillaimuthu & Phock Kin, who by a letter dated 8 May 1981 addressed to the defendants’ solicitors, Messrs: Sethu, Ghazali & Gomez, stated that the said notice of termination by the defendants was invalid and unacceptable. The defendants through their solicitors then replied by letter dated 21 May 1981, asserting the contrary, namely, that the termination was quite lawful and effective and that Universal Agency was no longer the defendants’ agent.

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He finally asserted that if the injunction sought in the summons were not granted, there is every likelihood that the defendants would arrange to effect sales of the newspapers and periodical in the States of Penang (inclusive of Province Wellesley), Perak, Kedah and Perlis either themselves or appoint their agents on their behalf to do so in breach of the said

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a agreement with the consequence that Central Agencies will be prevented from recovering the substantial debts owing by the defendants to them as the defendants are in dire financial straits. So much for the case for the plaintiff.

I now turn to consider the affidavit in opposition affirmed to by San Ah Kiat (f), manager of the defendant company, on 4 July 1981.

b In the first place, she admits that the plaintiff was granted the sole agency to sell the National Echo and the Sunday Echo in the States referred to and on the terms mentioned. However, she denies there was the alleged oral agreement. Specifically, she states that if Mr. K.K. Liew purported to enter into the alleged oral agreement on behalf of the defendants, then this gentleman had no authority express or implied to do so and the defendants had no knowledge of this. She adds that the plaintiff himself was appointed a director of the defendant company on 21 May 1979, implying presumably, that he must have known of Mr.Liew's lack of authority.

d She disputes that the sum owing to the plaintiff is RM1,077,690.12 because she says that the plaintiff has included sums which represent interest. She goes on to say that the sums which represent interest were credited as the supply of newsprint to enable the plaintiff to avoid payment of tax. In support, she has exhibited a letter from Central Agencies dated 29 September 1980, addressed to the defendants, enclosing explanatory notes of accounts, including a note which reads: "Interest paid on behalf of Straits Echo in respect of friendly loan was agreed by previous General Manager Mr. Yap Teik Aun. He instructed us to bill in the form of sales on simili art paper."

e She further alleges that the plaintiff has, from time to time, credited bills when no physical stock had been received and cites as examples, and exhibits, two credit notes given by the plaintiff amounting to RM217,965.73 in respect of bills that were wrongly credited. She concludes that as far as the accuracy of the amounts owing is concerned the same would be less than what is claimed by the plaintiff. At the hearing before me, Counsel for the defendants said that the actual amount owing was RM434,311.06.

f I next turn to consider the affidavit in reply, affirmed to by Ooi Kim Tor on 15 July 1981 (Encl. 12).

In the first place, he denies that he had any knowledge that Mr. K.K. Liew had no authority to make the alleged oral agreement. He then asserts that as Mr. K.K. Liew was at all material times the managing director of the defendants and, as he personally signed the two letters in his capacity as managing director of the defendants, he had full authority to do so.

g Then he admits that he was appointed a director of the defendants on 21 May 1979, but ceased to hold office on 11 November 1979. He also admits that a sum of RM31,892 was credited in Central Agencies' account, as sale of similiart paper, when in fact it represented interest on loans obtained by the defendants. He blames one Mr.Yap Teik Aun who was then managing director and general manager of the defendants saying that it was on his instigation that the false entry was made. He next denies that he credited the defendants with bills when no physical stock was received.

i He accepts that his claim in the originating summons is founded on the agency agreement dated 15 July 1977, read with the alleged oral agreement confirmed by the two letters dated 25 May 1978, whereby, it will be recalled, the defendants agreed not to terminate the said agency for so long as the defendants shall be indebted to Central Agencies so as to enable Central Agencies to recover back all monies due from the defendants to Central Agencies.

The first point for consideration is whether procedure by way of originating summons is appropriate having regard to the issues which arise on the affidavits now before me and the gist of which I have just given.

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It is clear that the main planks in the plaintiff's case are constituted by the agency agreement of 15 July 1977 and the subsequent alleged oral agreement, confirmed by the two letters dated 25 May 1978, signed by Mr. K.K. Liew, whose authority to enter into the same on behalf of the defendants had been challenged. There is also an insinuation, albeit a wild one, that the plaintiff might have known of Mr. Liew's lack of authority.

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Now, the powers and duties of a managing director in the case of an incorporated company are not prescribed by law but defined by the Articles of Association and the contract of employment. In general, the function of a managing director is to exercise some or all of the directors' power of management. He has an independent "usual authority" of his own: (see, for example, *Clay-Hill Brick & Tile Co. Ltd. v. Rawlings* [1938] 4 All ER 100; *British (Thomson-Houston) Co. Ltd. v. Federated European Bank* [1932] 2 KB 176. In this case, neither the Articles of Association nor the contract of employment was before the Court. In any event, if the board of directors of the defendant company had in the past permitted Mr. Liew to act in the general management and conduct of the defendants' affairs without restriction, giving such implied permission would itself constitute an act of management by the Board so as to estop the defendants from denying the authority of Mr. Liew as against anyone who had relied upon it (per Diplock LJ in *Freeman & Lockyer v. Buckhurst Park Propertier (Margal) Ltd.* [1964] 1 All ER 630, 645). Be that as it may, there was clearly a serious dispute as to fact and law, namely, whether or not the alleged oral agreement was binding on the defendants. Similarly, allegations of fraud are clearly in the air and, since the reliefs of declaration and injunction which are prayed for, spring from the equitable jurisdiction of this Court, the conduct of the parties becomes most material.

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In my opinion, therefore, procedure by way of originating summons will be inappropriate. I also consider that the precise formulation of the claims of the plaintiff and the defendants is a matter of difficulty which ought to be resolved by precise and accurate pleadings. It follows, the proper procedure for the plaintiff to adopt is to issue a writ: see *Foon Seong v. Chan Soon Choon* [1947] MLJ 85 (per Bostock Hill J); *In re Powers* [1885] 30 Ch D 291, 296; *E'Singam v. Dr.Sundram & Ors.* [1960] MLJ 91 (per Adams J); *Ong Yok Chu & Anor. v. Yong Teck Fong & Anor.* [1960] MLJ 292 (per Ismail Khan J) I would accordingly dismiss the originating summons with costs on this ground alone.

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It is unnecessary to consider the merits but, had it been, I feel bound to say that I would not be disposed to answering the questions posed in favour of the plaintiff. This brings me to a consideration of a number of points not raised and authorities not cited by either Counsel.

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It is well-settled that Equity looks to the substance and not to the form and so it is clear that what the plaintiff is in effect seeking here is specific performance of the agency agreement dated 15 July 1977. Such a contract is by its inherent nature a personal contract, the relationship between the parties being of a fiduciary character depending upon mutual confidence. It is trite to say that the Courts will not in principle enforce such a contract, whether directly by an order for specific performance or indirectly by a mandatory injunction: see *Fry's Specific Performance*, 6th Edn. 50; *Page One Records Ltd. v. Britton* [1968] 1 WLR 157; *Denmark Productions Ltd v. Boscobel Productions Ltd.* [1969] 1 QB 699; *Chinnock v. Sainsbury* [1860] 30 LJ. This is understandable because an agent represents his principal

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a vis-a-vis third parties. As such, he has the power of affecting the legal position of his principal by the making of contracts or the disposition of property. This element of confidence was stressed in *Page One Records Ltd. v. Britton* (*supra*) where the manager of a very successful group of young musicians was denied an injunction which if granted would have had the effect of enforcing his agency contract. Where, as here, the agent is the sole agent, it is especially difficult to accept that the contract can be specifically enforced since if it were so

b ordered the principal would be obliged either to cease carrying on the business in question or to continuing with the aid of an agent in whom he has lost confidence and with whom he has been engaged in litigation. This is not to say however that the defendants may not be liable in damages for breach of contract but that is another matter and does not arise in these proceedings.

c The problem however is complicated by the fact that during the subsistence of the agency agreement of 15 July 1977, it was alleged that some time in May 1977, the alleged oral agreement (which I shall accept as binding on the defendants purely for purposes of argument and without deciding the question) was, as I have said, entered into whereby, in consideration of the plaintiff, as Central Agencies, advancing money to the defendants, paying some of their creditors and selling them newsprint, the latter agreed that the plaintiff as Universal

d Agency should remain their sole agent for the sales of the said newspapers and periodical under the agency agreement of 15 July 1977 "for so long as the defendants shall be indebted to Central Agencies so as to enable Central Agencies to recover back all moneys due from the defendants to Central Agencies."

Now, it is true that at Common Law a power of attorney coupled with an interest is irrevocable while that interest subsists: *Walsh v. Whitcomb* [1797] 2 Esp 565. This would apply, for

e example, to a power given to a creditor to sell land and to retain the proceeds to repay himself: *Gaussen v. Morton* [1830] 10 B & C 731. Similarly, a payment linked to a mortgage remains irrevocable until the money has been repaid; *Barclays Bank Ltd. v. Bird* [1954] Ch 274. Another example is an authority to receive rents until the principal and interest of a loan have been paid off: *Abbott v. Scrutton* [1846] 9 I Eq R 233. But a distinction must be

f drawn between a power coupled with interest and a case in which the interest is only collateral to the power. The latter does not render the power irrevocable: *Chinnock v. Sainsbury* [1860] 30 LJ Ch 409. It must be recognized that in this case the authority given to the plaintiff to act as agent was given independently under the agency agreement dated 15 July 1977 which stipulated that the period of the agency was for three years. It was during the currency of this agreement, that is to say, in May 1978, that the interest of the plaintiff arose under the alleged oral agreement. In other words, this interest arose after the agency

g agreement, and only incidentally. In my opinion, therefore, the interest is only collateral to the power and does not render the power irrevocable.

Furthermore, the agency agreement and the alleged oral agreement must, as Mr. Thillaimuthu himself conceded, be read together. If this is done, then even if the authority conferred upon the plaintiff were irrevocable, the injunction prayed for should be refused because it would,

h in effect amount to compelling the defendants to retain the plaintiff as their agent; such a suit cannot be maintained; *Frith v. Frith* [1906] AC 254, 261, 262.

I would go further and say that even if the agency agreement were irrevocable in law, I would exercise my discretion by refusing the declaration and injunction prayed for since I can find no exceptional circumstances justifying their grant: *Francis v. K.L. Municipal Councillors* [1962] 1 WLR 1411, 1417-1418.

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I do not consider that the case of *Decro-Wall International* [1971] 2 All ER 216, upon which Mr. Thillaimuthu laid so much stress, to be of any assistance to the plaintiff's case because in that case there was no question of any agency agreement but a purely commercial transaction between two companies under which the defendants, a UK company who bought the goods concerned from the plaintiffs, a French Company were the sole concessionaires for the plaintiffs' product in the UK and Northern Ireland and the plaintiffs undertook not to sell their goods in the UK to anyone other than the defendants. In return, the defendants were to use their best endeavours to create a market for the plaintiffs' goods in the UK and to develop it to its maximum potentiality. Sachs LJ found that the contract was not one for personal service which would, for instance, have determined automatically had the defendants' managing director (whose efforts played an important part in the success of the enterprise) met with a fatal accident and that in every sense it was a commercial transaction between the two companies (p. 229 para. B).

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Similarly, Buckley LJ observed:

... that as a result of the agreement the plaintiffs hoped to secure the services of the Managing Director of the defendant company, but the contract was between the two companies and would have remained in operation although the Managing Director of the defendant company might have died or retired from business. (p. 234 para. a).

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In the result, the Court of Appeal observed that it was well within the discretion of the trial Judge to grant a negative injunction against the plaintiffs selling their products in the U.K. or appointing someone else to represent them there.

On the other hand, the circumstances of the instant case which I have outlined above afford good and cogent reasons for their refusal. The plaintiff is left, as I have said, to his remedy in damages for breach of contract.

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In any event, I was informed by Counsel for the defendants, and this was not disputed by the Counsel for the plaintiff, that the only reason why this application was being opposed was because the defendants were intending to sell their business and that negotiations for this purpose are in progress. Now, nowhere in the agreement of 15 July 1977 or the alleged oral agreement is there any undertaking by the defendants that they will not sell their business while they remain indebted to the plaintiff as Central Agencies and I do not consider that such a term can be implied. "It is always a dangerous matter" said Lord Buckmaster in *L. French & Company Ltd. v. Leeston Shipping Company Ltd.* [1922] 1 AC 451 at 454/55:

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to introduce into a contract by implication provisions which are not contained in express words, and it is never done by the Courts excepting under the pressure of conditions which compel the introduction of such terms for the purpose of giving what Lord Bowen once described as "business efficacy" to the bargain between the parties. There is no need whatever in the present case for the introduction of any such term. The contract works perfectly well without any such words being implied, and if it were intended on the part of the shipbroker to provide for the cessation of the commission which he earned owing to the avoidance of the charterparty, he ought to have arranged for that in express terms between himself and the shipowner.

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And in *Rhodes v. Forwood* [1876] 1 LR 256 at 267, Lord Cairns LC said

The simple point here appears to me to be, as it is admitted that there is no express contract which has been violated, can your Lordships say that there is any implied contract which has been violated? I can find none. I cannot find any implied contract that the colliery owner would not sell his colliery entire. Therefore I am obliged to arrive at the conclusion that the decision of the Court of Exchequer was correct, and that judgment in the action should be given as the Court of Exchequer gave it, for the defendant.

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- a* In the result, even assuming procedure by way of Originating Summons is appropriate and the alleged oral agreement is binding on the defendants, I would not have been prepared to exercise my discretion by granting the injunction sought nor, for that matter, would I have been prepared to exercise my discretion by making the declaration sought since, apart from what I have already said, having decided that the plaintiff would not be entitled to the injunction, such a declaration would be of no practical value to the plaintiff and therefore
- b* outside the province of the Courts to grant: see *Earl of Dysart v. Hammerton* [1914] 1 Ch 822.

The Originating Summons is accordingly dismissed with costs but without prejudice to the plaintiff's right to institute proceedings by way of a writ for such reliefs as he may be advised.

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Also found at [1984] 2 CLJ 243

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